tion of even the Preamble to the Constitution of the United States, said Preamble being as follows:

"We, the People of the United States, in Order to form a more perfect Union, establish Justice, insure Domestic Tranquil-ity, provide for the common defense, promote the General Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

[fol. 5] 10. That so much of said Article II, Section I, Paragraph 3, of the Constitution of Georgia, as amended, and Sections 34-103, 34-113, 34-114, and 92-108 of the Code of Georgia, enacted in pursuance thereof, as requires the payment of poll taxes as a prerequisite to the right of citizens of the United States residing in this State to register and vote for the candidates enumerated in Paragraph 3 above is in conflict with, contrary to and in derogation of article I, Section 8, Paragraph 1 of the Constitution of the United States, said paragraph being as follows:

"Powers of Congress. The Congress shall have power.

I. Taxes. To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States."

II. That so much of said Article II, Section I, Paragraph 3 of the Constitution of Georgia, as amended, and Sections 34-103, 34-113, 34-114 and 92-108 of the Code of Georgia, enacted in pursuance thereof, as requires the payment of poll taxes as a prerequisite to the right of citizens of the United States residing in this State to register and vote for the candidates enumerated in Paragraph 3 above is in conflict with, contrary to and in derogation of Article I, Section 9, Paragraph 4 of the Constitution of the United States, said paragraph being as follows:

"Capitation or other Direct Tax. No capitation or other direct Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken."

12. That so much of said Article II, Section I, Paragraph 3 of the Constitution of Georgia, as amended, and Sections [fol. 6] 34-103, 34-113, 34-114 and 92-108 of the Code of

Georgia, enacted in pursuance thereof, as requires the payment of poll taxes as a prerequisite to the right of citizens of the United States residing in this State to register and vote for the candidates seeking office as enumerated in Paragraph 3 above is in conflict with, contrary to and in derogation of Article IV, Section 2, Paragraph 1 of the Constitution of the United States, said paragraph being as follows:

"Citizens Privileges. The Citizens of each State shall be entitled to all privileges and immunities of Citizens in the several States."

13. That so much of said Article II, Section I, Paragraph 3 of the Constitution of Georgia, as amended, and Sections 34-103, 34-113, 34-114 and 92-108 of the Code of Georgia, enacted in pursuance thereof, as requires the payment of poll taxes as a prerequisite to the right of citizens of the United States residing in this State to register and vote for the candidates enumerated in Paragraph 3 above is in conflict with, contrary to and in derogation of Article VI, Section 2, of the Constitution of the United States, said section being as follows:

"Constitution and Treaties as the Supreme Law.
This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, and [Sic] Thing in the Constitution or Laws of any State to the contrary notwithstanding."

14. That so much of said Article II, Section I, Paragraph 3 of the Constitution of Georgia, as amended, and Sections [fol. 7] 34-103, 34-113, 34-114, and 92-108 of the Code of Georgia, enacted in pursuance thereof, as requires the payment of poll taxes as a prerequisite to the right of citizens of the United States residing in this State to register and vote for the candidates seeking the offices enumerated in Paragraph 3 above is in conflict with, contrary to and in derogation of Article XIV, Section 1 of the Constitution of the United States, said section being as follows:

"Citizenship. (Section 1). All persons born or naturalized in the United States, and subject to the jurisdiction

thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

15. That so much of said Article II, Section I, Paragraph 3, of the Constitution of Georgia, as amended, and Sections 34-103, 34-113, 34-114, and 92-108 of the Code of Georgia, enacted in pursuance thereof, as requires the payment of poll taxes as the prerequisite of the right of citizens of the United States residing in this State to register and vote for the candidates seeking the offices enumerated in paragraph 3 above is in conflict with, contrary to and in derogation of Article XV, Section 1 of the Constitution of the United States, said section being as follows:

"Right of Citizens to Vote. (Section 1.)
The right of citizens to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

16. That so much of said Article II, Section 1, Paragraph [fol. 8] 3 of the Constitution of Georgia, as amended, and Sections 34-103, 34-113, 34-114 and 92-108 of the Code of Georgia, enacted in pursuance thereof, as requires the payment of poll taxes as a prerequisite to the right of citizens of the United States residing in this State to register and vote for the candidates seeking the offices enumerated in Paragraph 3 above is in conflict with, contrary to and in derogation of Article XIX, Section 1 of the Constitution of the United States, as amended, said section being as follows:

"Equal Suffrage. (Section 1.) The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex."

17. That so much of Article II, Section 1, Paragraph 3 of the Constitution of Georgia, as amended, and Section 34-103, 34-113, 34-114 and 92-108 of the Code of Georgia, enacted in pursuance thereof, as requires the payment of poll taxes as a prerequisite to the right of citizens of the United States residing in this State to register and vote for the candidates

seeking the offices enumerated in Paragraph 3 above, being in conflict with, contrary to and in derogation of the Preamble; Article I, Section 8, Paragraph 1; Article I, Section 9, Paragraph 4; Article IV, Section 2, Paragraph 1; Article VI, Section 2; Article XIV, Section 1; Article XV, Section 1, and Article XIX, Section 1 (as amended) of the Constitution of the United States, are likewise in conflict with, contrary to and in derogation of Article XII, Paragraph 1 of the Constitution of this State, said paragraph being as follows:

"Supreme Law.—The laws of general operation in this State are, first; As the Supreme Law: The Constitution of the United States, the laws of the United States in pursuance thereof and all treaties made under the authority of the United States."

[fol. 9] 18. That there are only nine States in the United States which required the payment of poll taxes as a prerequisite to the right of citizens to vote for the candidates enumerated in Paragraph 3 above; that an average of only eleven per cent. of the population, as shown by the census of 1930, of said States having such laws voted in the General Elections of 1932 in which the President of the United States, Members of the Congress of the United States, Governors and Members of the General Assembly in said nine States were elected.

19. That in the remaining thirty-nine States of the United States in which the payment of poll taxes is not a prerequisite to the right of citizens of the United States and of the several States to vote for candidates seeking the offices above mentioned, there was an average of thirty-nine per cent. of the population, as shown by the census of 1930, who voted in said General Election, of 1932.

20. That only twelve per cent. of the population of Louisiana, as shown by the census of 1930, voted in the General Elections of 1932, at which time the payment of poll taxes was a prerequisite to the right of citizens to vote in that State, and that since the repeal of said poll tax law there were approximately thirty per cent. of the population who voted in the primary election, held January 21st, of this year.

21. That in the said nine States where the payment of poll tax is required before citizens may register and vote, only

six to nineteen per cent. of the population, based upon the 1930 census, voted for the candidates for the offices enumerated in Paragraph 3 above in the General Elections of 1932, whereas in the same elections in the States not requiring the payment of poll taxes as a prerequisite to registering and voting from twenty-two to forty-eight per cent [fol. 10] of the population cast their votes.

22. That said Article II, Section 1, Paragraph 3 of the Constitution of Georgia, as amended, and the laws above quoted which were enacted in pursuance thereof, impose a penalty and a burden upon the citizens of the United States residing in Georgia who desire to vote for the President and the Members of the Congress that are not required of citizens of thirty-nine other States throughout this Nation.

23. That the method provided for collecting and enforcing the payment of said poll tax is not by levy and pursuit as are all other forms of taxation provided for under the Constitution of the United States, the Constitution of Georgia, and all laws enacted in pursuance thereof, but is through the process of injunction and restriction against the rights of citizens of the United States residing in this State to vote for the President and the Members of the Congress.

24. That according to the average vote in States which do not require the payment of a poll tax as a prerequisite to that privilege, inasmuch as only eight per centum of Georgia's population, based upon the census of 1930, voted int he General Elections of 1932, the said poll tax laws have disfranchised approximately thirty-one per cent. of the citizens of the United States residing in this State who in the absence of a poll tax would have cast their ballots.

25. That said poll tax laws of Georgia, not being uniform throughout the States of the Union, deprive the citizens of the United States residing in Georgia of the privileges and immunities enjoyed by the citizens of the several other States in the exercise of their inherent right of franchise to vote for persons elected and to be elected to administer the affairs of our National Government.

[fol. 11] 26. That Section 92-108 of the Code of Georgia, exacted in pursuance of said poll tax provision in the Constitution of this State, exempting persons above the age of

sixty from the payment of said tax and granting privileges to the female inhabitants not enjoyed by the male residents between the ages of twenty-one and sixty is discriminatory and denies to petitioner the equal protection of the laws within the jurisdiction of this State guaranteed by the Constitution of the United States.

27. That said poll tax laws of this State were born in iniquity and nurtured by the Feudal Lords of this State into a vehicle in the form of a full grown Constitutional amendment upon which the Tories have for generations been riding in luxury while far in excess of the majority of the population, being disfranchised from voting by reason of poverty, have remained in a helpless state of hunger and want without even the privilege of participating in the selection or election of the officials of our Government from the President of the United States to the least important office of the State.

28. That with only eight per centum of the population of Georgia participating as voters in the election of our Federal and State officials, as aforesaid, autocracy and tyranny have reigned supreme over the poor people of this section of our great Nation, the like of which caused Washington and his army to throw off the yoke placed upon our forefathers by the Crown of England and prompted the adoption of the Constitution of the United States, for the preservation of the sacred provisions of which this proceeding is instituted in the hope that not only your petitioner but six or seven times as many citizens of the United States residing in this State as ever voted before may become enfranchised and henceforth enjoy the privileges and immunities [fol. 12] of persons residing in thirty-nine of the other States of the Union, and which a free people of right under a democratic form of government should enjoy, in the election of a President and Members of the Congress of the United States.

29. That in the General Elections and primaries to be held in this State during this year, candidates for the offices of President of the United States, Members of the Upper and Lower House of Congress, Governor and Members of the General Assembly of this State will be elected, and by reason of petitioner's inability and failure to pay said poll taxes required under the laws of this State as set out above,

he has been denied the right to register and vote by defendant Tax Collector.

30. That as a result of the existence of the laws of Georgia and the facts upon which the other allegations of this petition are based, petitioner has been reduced to a condition of virtual servitude within the meaning of Article XV, Section 1 of the Constitution of the United States, for that he is without property and dependent upon his labor for sustenance and does not have the right under the present system and his poverty stricken condition to fix the amount of his earnings, but is dependent upon such pittance as might be handed to him almost as a master would treat a slave, and without the right to vote he does not enjoy any greater privilege and immunities from his Government than did the slaves, for the enfranchising of whom said section was enacted as an amendment to the Constitution of the United States.

31. That petitioner has no adequate legal remedy to enforce and protect his rights under the Constitution of the United States except through the process of these mandamus proceedings against defendant as Tax Collector of Fulton County, Georgia, who is in full and absolute charge of the [fol. 13] voters' registration books under Section 34-101 of the Code of Georgia, said section being as follows:

"34-101. Tax Collectors required to keep books. Oath of Voters. The tax collectors of the several counties are required to keep a book to be called the permanent qualification or voters' book, upon which all persons desiring to qualify as electors shall be required to qualify as required by the constitution and laws of this State. Said book shall contain, on the first page thereof, or near the first page, the oath required to qualify an elector." (Acts 1894, p. 116; Acts 1908, pp. 58; Acts 1913, pp. 115.)

32. That less than eight per cent. of the population of Georgia voted in the election in which Article II, Section 1, Paragraph 3 of the Constitution of Georgia was amended, the original Constitutional provision having required the payment of both poll tax and all other forms of taxes of every nature whatsoever as a prerequisite to the right of citizens to vote, and by reason of said original Constitutional provision restricting the right of suffrage, when the present poll tax amendment to the Constitution was adopted, far

in excess of the majority of the population was disfranchised from voting; that the question whether the citizens of the United States residing in this State should or should not pay a poll tax as a prerequisite to the right to register and vote was never submitted to the people, but the question of whether the payment of all taxes of every nature whatsoever or only the poll tax as a prerequisite to the right to register and vote was the question submitted when the amendment now of force was submitted to about eight per cent. of the population and approved by a little more than two-thirds of that number of the registered voters.

33. That for the ready convenience and reference of the Court to the voting statistics in the several States of the [fol. 14] Union upon which the foregoing percentages are based, petitioner attaches hereto as Exhibit D a compilation of figures showing the population in the forty-eight States, as shown by the census of 1930, and the number of votes cast in the General Elections of the several States in which the President and Members of the Congress were elected in November of 1932, which said compilation of figures as Exhibit D also shows the States which require the payment of a poll tax as a prerequisite to the right to register and vote and the States which do not have such a law in their statutes.

34. That for reasons herein above set out, in each and every provision of said Article II, Section 1, Paragraph 3 of the Constitution of Georgia, as amended, and Sections 34-103, 34-113, 34-114, and 92-108 of the Code of Georgia, enacted in pursuance thereof, the rights, privileges and immunities of petitioner under the provisions of the Constitution of the United States as quoted in paragraphs 9, 10, 11, 12, 13, 14, 15 and 16 herein and Article XII, Section 1 of the Constitution of this State as quoted in Paragraph 17 above, have been abridged and denied, for that:

(a) Said laws are in violation and defiance of the General Welfare and the Blessings of Liberty provisions guaranteed Posterity in the Preamble of the Constitution of the United States;

(b) They are not uniform throughout the United States;

(c) They lay a capitation and direct tax upon petitioner in violation and defiance of Article I, Section 9, Paragraph 4 of the Constitution of the United States;

(d) They impose a financial tax burden upon the head of petitioner, the payment of which is a prerequisite to register and vote in the election of the President and mem- [fol. 15] bers of the Congress of the United States which is not required of citizens of thirty-nine other States of the Union;

(e) Said Georgia laws, being in violation and defiance of the several provisions of the Constitution of the United States herein above set out, are, therefore, in violation and defiance of Article VI, Section 2 of the Federal Constitution which proclaims and declares the provisions thereof to be the Supreme Law of the Land;

(f) They are in violation of that provision of Article XIV, Section 1 of the Constitution of the United States which declares the- "no State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States * * * nor deny to any person within its jurisdiction the equal protection of the laws.";

(g) They are in violation and defiance of Article XV, Section 1 of the Constitution of the United States which forbids the passage of any law that denies or abridges the right of citizens to vote by reason of race, color or previous condition of servitude, for that by reason of facts herein above alleged, petitioner has been and is still in a virtual condition of servitude and poverty, and being thereby unable to pay said taxes, has been deprived of the inherent right to vote;

(h) They grant special privileges to female inhabitants of this State with respect to said taxes which are denied to petitioner;

(i) They are in violation and defiance of Article XII, Paragraph 1 of the Constitution of Georgia, which recognizes the Constitution of the United States as the Supreme Law of the Land;

(j) They are discriminatory for that they exempt persons above the age of sixty from paying said taxes as a prere- [fol. 16] quisite to voting and require the payment thereof by petitioner before he can register and vote;

(k) The method of collecting said taxes is through the process of prohibition, injunction and restriction against

the right of petitioner to register and vote in the elections above mentioned.

35. That for reasons herein above set out said Article II, Section 1, Paragraph 3, of the Constitution of Georgia, as amended, and said laws enacted in pursuance thereof are void as being in conflict with, contrary to and in derogation of the foregoing Articles of the Constitution of the United States and should be so declared and adjudged by this Court.

Wherefore, petitioner prays:

(a) That process issue requiring and directing defendant to appear in response to these proceedings as by law provided in such cases;

(b) That a mandamus nisi do issue directing defendant to show cause why the prayers of petitioner should not be granted;

(c) That upon hearing a mandamus absolute be granted;

(d) That Article II, Section 1, Paragraph 3 of the Constitution of Georgia, as amended, and all of said laws enacted in pursuance thereof as enumerated in these proceedings, be declared null and void as being in conflict with, contrary to and in derogation of the Constitution of the United States as set out herein;

(e) And for such other and further relief as the ends of justice may require in the premises.

J. Ira Harrelson, Attorney for Petitioner.

[fol. 17] EXHIBIT "A" TO PETITION

GEORGIA,
Fulton County:

I do swear, or affirm that I am a citizen of the United States, that I am twenty-one years of age or will be on the — of this calendar year; that I have resided in this State for one year and in this county for six months, immediately preceding the date of this oath, or will have so resided on the — of — of this calendar year; that I have paid all Poll taxes which, since the adoption of the Constitution

of 1877, have been required of me, (including) (except) taxes for this year; that I possess the qualifications of an elector required by the Constitutional amendment adopted in 1908, and that I am not disfranchised from voting by reason of any offense committed against the laws of this State. I further swear, or affirm, that I reside in the — Ward of the City of Atlanta, at No. — on — Street, or in the — District, G. M.; my age is —; my occupation is —.

(Sign here) ——.

Sworn to and subscribed before me, this — ——, ——, ——, Registrar.

[fol. 18] EXHIBIT "B" TO PETITION

Law Offices, J. Ira Harrelson

Twenty-Two Marietta Street Building, Atlanta, Ga.

Phone Walnut 2044.

Associates: John V. Deegan, Pat J. Avery, S. J. Goodman.

March 16, 1936.

Mr. T. Earl Suttles, as Tax Collector, Fulton County, Georgia,

Fulton County Court House, Atlanta, Georgia.

DEAR SIR:

On this date I appeared at the voters' registration window in the Fulton County Court House for the purpose of registering to vote in the primaries and general election to be held during this year in which election qualified candidates for the offices of President of the United States, Members of the Lower and Upper House of Congress of the United States, Governor and Members of the General Assembly of Georgia are to be elected.

I have been a bona fide resident of Fulton County, Georgia, for more than seven years. I have neither made a poll tax return to the Tax Collector or any other tax officer of this County or State during said period, nor have I paid any poll taxes to the County or State, nor have I registered to vote by reason of the fact that a poll tax receipt show-

ing that my poll taxes for a period of seven years have been paid and also an oath that I have paid the same are required as prerequisites to registration.

I am a white male citizen, twenty-eight years of age, and have complied with and am qualified to register and [fol. 19] vote under all the laws of the State of Georgia except that provision of our laws which requires the payment of a poll tax and that I give an oath "that I have paid all poll taxes which I have had an opportunity of paying agreeable to the law;" that I have demanded of your registration clerk in charge of the registration book in the office of the tax collector that I be privileged to take the required oath under Section 34-103 of the Code of Georgia of 1933 with said poll tax payment provision eliminated therefrom; and your registration clerk of said registration book refused to administer the voters' oath to me with said poll tax provision stricken and without a poll tax receipt and denied me the privilege of registering.

This letter is, therefore, written to make formal demand upon you to administer to me the following oath which meets every requirement of Section 34-103 of said Code of Georgia of 1933 and all other election laws of Georgia except that part requiring the payment of a poll tax as a prerequisite to vote, to wit:

"I do swear, or affirm, that I am a citizen of the United States; that I am over twenty-one years of age; that I have resided in this State for one year, and in this County for six months, immediately preceding the date of this oath; and that I am not disfranchised from voting by reason of any offense committed against the Laws of the State. I further swear, or affirm, that I reside in the Second Ward of the City of Atlanta, at Number 23 of Fair Street, S. E.; my age is twenty-eight, my occupation "Georgia State Adjutant of the United States War Veterans, Inc., and Advertising Manager of the Inedpendent Veteran."

I contend that Article II, Section 1, Paragraph 3 of the Constitution of Georgia, described as Section 2-603 of the Code of Georgia of 1933, and Sections 34-103, 34-113 and 34-114 of said Code of Georgia are in conflict with, contrary [fol. 20] to and in derogation of Article IV, Section 2, Paragraph 1; Article XIV, Section 1; Article 1, Section 8, Paragraph 1; Article VI, Section 2 and Article 1, Section 9,

Paragraph 4 of the Constitution of the United States for the following reasons, to wit:

Because said sections of the Georgia Constitution and Code require that I pay seven years past due poll taxes before I can register and vote, which I am unable to pay; because said poll tax requirement is contrary to and in derogation of the foregoing sections of the Federal Constitution; because they are contrary to public policy and the welfare of our people of our nation; because they defeat the principles of democracy as intended by the founders of our American Government; because they restrict the rights of a free people; because they impose restrictions and penalties upon citizens desiring to vote; because they impose a tax on the heads of citizens which is neither levied nor collected as are all other forms of taxes; because the enforcement of their provisions constitute an injunction and restriction against the right of suffrage; because they impose penalties on citizens and voters of Georgia not required of citizens and voters of more than two-thirds of the other States of the United States in the exercise of their right to vote for the President of the United States and Members of the Congress of the United States; and for other reasons.

Very truly yours, Nolen R. Breedlove.

EXHIBIT "C" TO PETITION

Mar. 16, 1936.

Mr. N. R. Breedlove, 22 Mtta. St. Bldg., Atlanta, Georgia.

[fol. 21] DEAR SIR:

You have this day demanded that I register you without my requiring of you the usual oath for registration so far as it pertains to the payment of poll tax. Under the Constitution and laws of Georgia, I must respectfully refuse your request.

Yours very truly, T. E. Suttles, Tax Collector.

Exhibit "D" to Petition

State Without Tax	1930 Pop.	1932 Votes Polled	Percentage
Arizona	435,573	118,251	27.1
California	5,677,251	2,266,845	39.9
Colorado	1,035,791	457,696	44.2
Connecticut	1,606,903	594,183	36.8
Delaware	238,380	112,902	47.3
Idaho	445,032	186,520	41.9
Illinois	7,630,654	3,407,926	44.1
Indiana	3,238,503	1,575,282	48.6
Iowa	2,470,939	1,036,683	41.9
Kansas	1,880,999	791,978	42.1
Kentucky	2,614,589	983,063	37.8
Maine	797,423	298,444	37.4
Maryland	1,631,526	510,054	31.2
Massachusetts	4,249,614	1,580,043	37.1
Michigan	4,842,325	1,664,628	34.3
Minnesota	2,563,953	1,002,843	39.1
Missouri	3,629,367	1,609,894	44.3

[fol. 22]

Montana	537,606	216,479	40.3
Nebraska	1,377,963	570,135	41.4
Nevada	91,058	41,430	45.4
New Hampshire	465,293	205,520	44.2
New York	12,588,066	4,688,614	37.2
North Carolina	3,170,276	711,410	22.4
North Dakota	680,846	256,290	37.6
Ohio	6,646,697	2,610,088	39.2
Oklahoma	2,396,040	704,633	29.4
Oregon	953,786	368,751	38.6
Pennsylvania	9,631,350	2,858,986	29.7
Rhode Island	687,497	266,170	38.7
South Dakota	692,849	288,438	41.6
Utah	507,847	206,579	40.0
Vermont	359,611	136,978	38.0
Washington	1,563,396	664,514	42.5
West Virginia	1,729,205	743,774	43.1
Wisconsin	2,939,006	1,114,808	37.8
Wyoming	225,565	96,963	42.9

Exhibit D—Continued

State Having Poll Tax	1930 Pop.	1932 Votes Polled	Percentage
Alabama	2,646,248	245,034	9.2
Arkansas	1,854,482	118,251	11.9
Florida	1,468,211	276,252	18.8
Georgia	2,908,506	255,590	8.7
Mississippi	2,009,821	145,340	7.2
South Carolina	1,738,765	104,407	6.0
Tennessee	2,616,556	390,638	14.8
Texas	5,824,715	863,392	14.8
Virginia	2,421,851	298,242	12.3
Louisiana (Repealed 1934)	2,614,589	268,271	12.7

[fol. 23] *Duly sworn to by Nolen R. Breedlove. Jurat omitted in printing.*

In Superior Court of Fulton County

Order to Show Cause—Filed March 20, 1936

The foregoing read, considered, sanctioned and ordered filed.

It is further ordered that a copy thereof together with a copy of this Order be served upon T. Earl Suttles, as tax collector of Fulton County, Georgia, the defendant named in said proceedings.

It is further ordered that said defendant be and appear before the Judge presiding over the Motion Division of this Court at 9:00 a. m. on Saturday, April 2, 1936, then and there to show cause why a mandamus absolute should not be issued against him as prayed in this petition, and further relief be granted as the facts of the case may warrant.

[fol. 24] It is further ordered that in default of such appearance and showing the mandamus prayed for will be made absolute and the petition will be accorded such relief as it may show it is entitled to.

This the 19th day of March, 1936.

John D. Humphries, Judge Superior Court, Atlanta Circuit.

IN SUPERIOR COURT OF FULTON COUNTY

SUMMONS AND RETURN—Filed March 20, 1936

NOLEN R. BREEDLOVE, Complain-t

versus

T. EARL SUTTLES, as Tax Collector of Fulton County, Georgia

To the Sheriff or His Deputy, of said County, Greeting:

The defendant is hereby required, personally or by attorney to be and appear at the Superior Court, to be held in and for said County, on the first Monday in May, 1936, then and there to answer the Plaintiff's complaint, as in default thereof said court will proceed, as to justice shall appertain.

Witness, the Honorable John D. Humphries, Judge of said court, this 20 day of Mch., 1936.

C. M. Paschal, Deputy Clerk.

[File endorsement omitted.]

GEORGIA,
Fulton County:

I have this day served the defendant T. Earl Suttles, tax collector, personally with a copy of the within petition and process & order.

This Mar. 20, 1936.

S. C. Wooten, Deputy Sheriff.

[fol. 25] IN SUPERIOR COURT OF FULTON COUNTY

No. 110888

NOLEN R. BREEDLOVE

vs.

T. EARL SUTTLES, as Tax Collector

Mandamus Proceedings

AMENDMENT TO PETITION—Filed April 15, 1936

Now comes petitioner in the above captioned proceeding, and by leave of the Court first had, files this his amendment to his original petition by showing the following:

1. Petitioner amends his original petition by adding as Paragraph 36 immediately following Paragraph 35, the following:

"That said Article II, Section 1, Paragraph 3 of the Constitution of Georgia, as amended, and said laws enacted in pursuance thereof, are void for that they are in conflict with, contrary to and in derogation of the following clause of Article IV, Section 4 of the Constitution of the United States, to wit:

'Republican Form of Government. The United States shall guarantee to every State in this Union a Republican Form of Government, * * *,' for that said laws of Georgia restrict the voting privileges of the citizens of this State to eight per cent. of the population, the effect of which is to maintain an autocratic rather than a republican or democratic form of government as contemplated and guaranteed by the Constitution of the United States."

2. Petitioner amends his original petition by adding as Paragraph 37, the following:

"That the said Georgia laws are in conflict with and in derogation of the Supreme Law of the Land which defines the word 'liberty' contained in the Fourteenth Amendment to the Constitution of the United States as not only embracing the right of a person to be free from physical restraint, but the right to be free in the enjoyment of all his [fol. 26] faculties as well, and by reason of petitioner's

inability to pay said poll tax and the inability of approximately thirty-one per cent of the remaining population of Georgia to pay the same, petitioner and other citizens are deprived of and denied the free enjoyment of all their faculties pertaining to the exercise of their choice in the election of the Members of Congress and the President of the United States."

3. Petitioner amends his original petition by adding as Paragraph 38 the following:

"That the right of all citizens to participate as electors under a republican form of government in the election of persons to represent the entire population of the United States being one of those 'fundamental principles of liberty and justice which lie at the base of all our civil and political institutions' is embodied in the concept 'due process of law' in the Fourteenth Amendment to the Constitution of the United States, and said right of franchise unhampered by and unrestricted by a 'head, capitation or direct tax' is protected under the 'due process of law' and other provisions of the Constitution of the United States herein cited against the hostile State invasion of that fundamental principle of liberty to vote, which lies at the base of all our civil and political institutions of government, of which Congress and the Executive Branch of the Federal Government are paramount."

4. Petitioner amends his original petition by adding as Paragraph 39 the following:

"That as set forth in the original petition enumerating the population and votes cast in the several States of the Union and showing that only eight per cent of Georgia's population voted in 1932 while an average of thirty-nine per cent voted in States not requiring the payment of a poll tax as a prerequisite to voting, said Georgia laws curtail and restrict electors of their right to vote in said national elec- [fol. 27] tions; that if said poll tax were increased to a high degree, as it could be if valid, it well might result in almost destroying the right of suffrage in its entirety by reducing the number of votes to even less than eight per cent. of the population of this great Empire State of the South."

5. Petitioner amends his original petition by adding as Paragraph 40 the following:

"That said Article II, Section 1, Paragraph 3 of the Constitution of Georgia, as amended, and said laws enacted in pursuance thereof, are void for that they are in conflict with, contrary to and in derogation of the First Amendment to the Constitution of the United States, said amendment being as follows:

'Rights of Conscience; Freedom of the Press, etc. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances,' for that said laws of Georgia restrict and prohibit the free exercise of petitioner's rights of conscience to express his opinion as to who shall be elected to the Congress and to the Presidency of the United States; that the exercise of the right to vote is the most sacred and important petition to the government for a redress of grievances that could possibly exist; that grievances against the government arise through the people's representatives who are in point of fact the government itself, and to be denied the right to cast a ballot in protest of the actions of our representatives of which we disapprove is to abridge and prohibit the free exercise of the right to petition the government for a redress of grievances; that to otherwise petition the government would be ineffectual should the representatives ignore the petition, [fol. 28] and the only effective way of petitioning the government for a redress of grievances is to privilege citizens to exercise that sacred right of conscience and speech through the process of that petition commonly known as the ballot; that under our present system of voting in Georgia, our representatives in Congress and the President of the United States are responsible to only eight per cent. of the people of Georgia, and a petition other than through the ballot box by the ninety-two per cent who are disfranchised by reason of said poll tax provision in our Constitution and laws is as ineffectual as the April breezes on the Rock of Gibraltar; that said Georgia laws make no provision for exempting paupers unable to pay said tax; that because petitioner is unable to pay the same and for other reasons herein cited, he is denied 'due process of law' guar-

anteed under the Fourteenth Amendment to the Constitution of the United States."

6. Petitioner amends his original petition by adding as Paragraph 41 the following:

"'That said Article II, Section 1, Paragraph 3 of the Constitution of Georgia, as amended, and said laws enacted in pursuance thereof, are in conflict with, contrary to and in derogation of Article VII, Section 2, Paragraph 1 of the Constitution of Georgia, as amended, which reads:

'All taxation shall be uniform upon the same class of subjects, and ad valorem on all property subject to be taxed within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws. The General Assembly may, however, impose a tax upon such domestic animals as from their nature and habits are destructive of other property,' for that said poll tax provisions of our laws grant special privileges to women which are denied to men and exempt persons above the age of sixty from the payment of said tax, while at the same time they [fol. 29] require the payment of said taxes by persons between the ages of twenty-one and sixty years of age; and for the further reason that the foregoing section in declaring that all taxation shall be on an ad valorem basis expressly inhibits a capitation or head tax such as is sought to be imposed by Article II, Section 1, Paragraph 3 of the Constitution of Georgia and said laws enacted in pursuance thereof."

Wherefore, petitioner prays that this his amendment be allowed and ordered filed, and that the same be made a part of his original petition as by law provided in such cases.

J. Ira Harrelson, Attorney for Petitioner.

Duly sworn to by Nolen R. Breedlove. Jurat omitted in printing.

Order of the Court

The foregoing amendment considered, allowed, and ordered filed.

This the 14th day of April, 1936.

Hugh M. Dorsey, Judge Superior Court, Atlanta Circuit.

[fol. 30] [File endorsement omitted.]

[fol. 31] IN SUPERIOR COURT OF FULTON COUNTY

[Title omitted]

AMENDMENT TO PETITION—Filed May 6, 1936

Now comes petitioner in the above captioned case, and by leave of the Court first had, amends his original petition in the following manner:

1. Petitioner amends Paragraph 26 of his original petition by adding immediately preceding the word "exempting" in line three of said paragraph the word "arbitrarily," and by striking the word "discriminatory" in the sixth line of said paragraph and inserting in lieu thereof the word "an arbitrary and unreasonable discrimination," so that said paragraph, as amended, will read as follows:

"That section 92-108 of the Code of Georgia, enacted in pursuance of said poll tax provisions in the Constitution of this State, arbitrarily exempting persons above the age of sixty from the payment of said tax and granting special privileges to the female inhabitants not enjoyed by the male residents between the ages of twenty-one and sixty is *an* arbitrary and unreasonable and denies to petitioner the equal protection of the laws within the jurisdiction of this State guaranteed by the Constitution of the United States."

2. Petitioner amends Paragraph 34 of his original petition by striking sub-paragraph (h) therefrom and inserting in lieu thereof the following:

"They grant special privileges to female inhabitants of this State with respect to said taxes which are arbitrarily and unreasonably denied to petitioner."

3. Petitioner further amends Paragraph 34 of his origi-[fol. 32] nal petition by striking sub-paragraph (j) therefrom and inserting in lieu thereof the following:

"They arbitrarily and unreasonably discriminate against petitioner for that they exempt persons above the age of sixty and require the payment of said tax by petitioner and other persons similarly situated."

4. Petitioner amends Paragraph 41 of his petition, as amended, by inserting immediately following the word "laws" the word "arbitrarily" and inserting in the seventeenth line of said paragraph immediately preceding the word "exempt" the word "arbitrarily," so that said paragraph as amended will read as follows:

"Petitioner amends his original petition by adding as Paragraph 41 the following:

'That said Article II, Section 1, Paragraph 3 of the Constitution of Georgia, as amended, and said laws enacted in pursuance thereof, are in conflict with, contrary to and in derogation of Article VII, Section 2, Paragraph 1 of the Constitution of Georgia, as amended, which reads:

'All taxation shall be uniform upon the same class of subjects, and ad valorem on all property subject to be taxed within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws. That the General Assembly may however impose a tax upon such domestic animals as from their nature and habits are destructive of other property,' for that said poll tax provision of our laws arbitrarily grant special privileges to women which are denied to men and arbitrarily exempt persons above the age of sixty from the payment of said tax, while at the same time they arbitrarily require the payment of said taxes by persons between the ages of twenty-one and sixty years of age; that for the further reason that the foregoing section in declaring that all taxation shall be on an [fol. 33] ad valorem basis expressly inhibits a capitation or head tax such as is sought to be imposed by Article II, Section 1, Paragraph 3 of the Constitution of Georgia and said laws enacted in pursuance thereof.' "

5. Petitioner further amends his original petition by adding as Paragraph 42 the following:

"That Sections 34-103 and 92-108 are in conflict with and in derogation of Article II, Section 1, Paragraph 3 of the Constitution of Georgia as amended, which reads in part, 'To entitle a person to register and vote at any election by the people, he shall have resided in the State one year next preceding the election, and shall have paid all poll taxes that he may have had an opportunity of paying agreeable to law. . . .,' and said sections are in conflict with

Sections 34-113 and 34-114 which requires all voters to pay said poll tax as a prerequisite to the right to vote, for that said Sections 34-103 and 92-108 arbitrarily grant special privileges to women which are denied to men, and arbitrarily exempt persons above the age of sixty from payment of said tax while requiring petitioner and other persons between the ages of twenty-one and sixty to pay said tax before they can register to vote in the election enumerated in Paragraph 3 of plaintiff's original petition.

Wherefore, petitioner prays that this his amendment be allowed and ordered filed, and that the same be made a part of his original petition as by law provided in such cases.

J. Ira Harrelson, Attorney for Petitioner.

[fols. 34-35] Order of the Court

The foregoing amendment read, considered, allowed and ordered filed. Subj. to dem. & obj.

This 22nd day of April, 1936.

Hugh M. Dorsey, Judge Superior Court, Atlanta Circuit.

[File endorsement omitted.]

In Superior Court of Fulton County

Order Dismissing Case

General Motion to dismiss the foregoing petition is sustained and case hereby dismissed.

This May 6th, 1936.

Hugh M. Dorsey, Judge S. C. A. C.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 36] In Superior Court of Fulton County

[Title omitted]

Bill of Exceptions—Filed May 20, 1936

Be it Remembered that on April 23, 1936, the above captioned case came on for a hearing before the Honorable

Hugh M. Dorsey, Judge of the Motion Division of Fulton Superior Court, Atlanta Circuit, and after announcement of all parties as being ready for argument upon the points of law involved in said case, counsel for defendant made an oral motion to dismiss plaintiff's petition as amended upon the general ground that the same set forth no cause of action, which said motion was argued, and at the conclusion of the arguments on the following day the Court took the case under further consideration and on May 6th, 1936, entered up an order sustaining defendant's oral motion and dismissing the petition.

The plaintiff in error specifies as material to the errors hereinafter complained of the following portions of the records:

(a) Copy of plaintiff's original petition for mandamus filed in the office of the clerk of Fulton Superior Court on March 20th, 1936, together with process thereon and order of mandamus nisi signed on March 19th, 1936, by the Honorable John D. Humphries, one of the Judges of said Court; also entry of service of said petition upon defendant entered upon the back of said process by S. C. Wooten, Deputy Sheriff, on March 20th, 1936, said original petition being [fol. 37] numbered as 110888.

(b) Copy of plaintiff's amendment to his original petition filed in the office of the clerk of Fulton superior court on the 15th day of April, 1936, together with the Order of the Court thereon allowing and ordering the same filed.

(c) Copy of plaintiff's amendment to his original petition filed in the office of the Clerk of Fulton Superior Court on the 6th day of May, 1936, together with the Order of the Court thereon allowing and ordering the same filed.

(d) Copy of the Order of the Honorable Hugh M. Dorsey dated May 6th, 1936, sustaining the oral motion of counsel for defendant and dismissing plaintiff's petition.

To the Order and Judgment of the Court on May 6th, 1936, sustaining the oral motion of counsel for the defendant and dismissing said petition, plaintiff in error then excepted, now excepts and assigns the same as error upon the ground that said petition as amended sets forth a legal cause of action.

And now comes plaintiff in error, within the time provided by law, and assigning error on the ruling of the Court

sustaining the oral motion of counsel for the defendant and dismissing said petition as being contrary to law for the reason that said petition sets forth a legal cause of action, tenders this his bill of exceptions and prays that the same may be certified to and transmitted to the Supreme Court of Georgia in order that the alleged errors may be considered and corrected,—all as provided by law.

J. Ira Harrelson, Attorney for Plaintiff in Error, 1517 22 Marietta St. Bldg., Atlanta, Georgia.

[fol. 38] JUDGE'S CERTIFICATE TO BILL OF EXCEPTIONS

I do certify that the foregoing Bill of Exceptions is true, and specifies all of the record material to a clear understanding of the errors complained of; and the Clerk of the Court of Fulton Superior Court is hereby ordered to make out a complete copy of such parts of the record in said case as are specified in this Bill of Exceptions, and certify the same as such, and cause the same to be transmitted to the next term of the Supreme Court of Georgia, that the errors alleged to have been committed may be considered and corrected.

This the 20th day of May, 1936.

Hugh M. Dorsey, Judge Fulton Superior Court, Atlanta Circuit.

ACKNOWLEDGMENT OF SERVICE

Due and legal service of the within and foregoing Bill of Exceptions acknowledged; copy received and all other or further notice or service waived.

This the 21st day of May, 1936.

Carter, Carter & Johnson, Attorneys for Defendant in Error, 744 Citizens and Southern Bank Bldg., Atlanta, Georgia.

[fol. 39] IN SUPERIOR COURT OF FULTON COUNTY

[Title omitted]

PAUPER AFFIDAVIT ON BILL OF EXCEPTIONS TO SUPREME COURT OF GEORGIA

Personally appeared before the undersigned, Nolen R. Breedlove, plaintiff in error in the Bill of Exceptions filed in the above stated case, and after being duly sworn, on oath, deposes and says that he is, because of his poverty, unable to pay the costs in said case or to give security therefor.

Nolen R. Breedlove.

Sworn to and subscribed before me this the 20 day of May, 1936. C. M. Paschal, Notary Public, Fulton Co., Ga. (Notary Seal.)

[File endorsement omitted.]

[fol. 40] Clerk's certificate to foregoing paper omitted in printing.

[fol. 41] IN SUPREME COURT OF GEORGIA

JUDGMENT—October 14, 1936

The Honorable Supreme Court met pursuant to adjournment.

The following judgment was rendered: N. R. Breedlove v. T. E. Suttles, tax collector.

This case came before this court upon a writ of error from the superior court of Fulton county; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed. All the Justices concur, except Atkinson, J., absent on account of illness.

[fol. 42] IN SUPREME COURT OF GEORGIA

No. 11456

BREEDLOVE

v.

SUTTLES, Tax Collector

OPINION—October 14, 1936

By the COURT:

The Court properly sustained the motion to dismiss the petition in this case.

Nolen R. Breedlove, alleging himself to be twenty-eight years of age and to have resided in Fulton County continuously for more than seven years, filed his petition for mandamus against T. E. Suttles, tax-collector of Fulton County, to require said officer to allow petitioner to register for elections without the payment of poll-taxes and without exacting of him the oath prescribed by statute, containing the provision "that I have paid all poll-taxes which I have had an opportunity of paying agreeably to law." The petitioner contends that Article 2, section 1, paragraph 3, of the constitution of Georgia, as amended (Code, § 2-603), and all statutes enacted in pursuance thereof, to wit, Code §§ 34-103, 34-113, 34-114, 92-108, requiring the payment of the poll-tax as a prerequisite to the right to register and vote for candidates seeking the offices of President and members of Congress, are contrary to and in derogation of the preamble and the following provisions of the constitution of the United States: Article 4, section 4, guaranteeing to every State a republican form of government; article 1, section 8, paragraph 1, as to uniform tax; article 1, section 9, paragraph 4, which prohibits the laying of capitation or other direct tax in proportion to the census or enumeration; article 4, section 2, paragraph 1, declaring that the citi- [fol. 43] zens of each State shall be entitled to all privileges and immunities of the citizens in the several States; article 6, section 2, declaring the Federal constitution to be the supreme law of the land; article 14, section 1, prohibiting States making or enforcing laws abridging the privileges and immunities of citizens of the United States; article 15,

section 1, guaranteeing the right of citizens without regard to race, color, or previous condition of servitude; article 19, section 1, prohibiting any laws denying or abridging the right of citizens to vote on account of sex; the first amendment, relating to the rights of conscience and the right to petition the government for a redress of grievances; the fourteenth amendment, as to the due process of law; the fifteenth amendment, that the right of citizens of the United States to vote shall not be denied or abridged on account of race, color, or previous condition of servitude.

And the foregoing statutes in regard to registration and the payment of poll-taxes are attacked as contrary to and in violation of the uniform-tax requirement prescribed by our State constitution, that all taxes shall be ad valorem; and it is alleged that these statutes are contrary to the first amendment to the constitution of the United States as to "rights of conscience, freedom of the press," etc., and contrary to that section of our State constitution which recognizes the constitution of the United States as the supreme law of the land; that article 2, section 1, paragraph 3, of the constitution of Georgia, as amended, is in conflict with other provisions of our State constitution, to wit, article 12, section 1, and article 7, section 2, paragraph 1; that said paragraph of the State constitution, and the laws enacted thereunder, are in violation of the due-process clause of the fourteenth amendment to the U. S. constitution and the clause [fol. 44] in said amendment which defines the word "liberty." An oral motion to dismiss the petition was sustained, and the plaintiff excepted.

Beck, Presiding Justice: The questions involved in this case by the objections raised as to the constitutionality of certain provisions of our law have been discussed by able text-writers and in many judicial opinions rendered by the courts of this country. In one part of his work on Constitutional Limitations, 1358-1370, the eminent writer, Justice Cooley, says:

"We have said, that, though the sovereignty is in the people, as a practical fact it resides in those persons who by the constitution of the State are permitted to exercise the elective franchise. The whole subject of the regulation of elections, including the prescribing of qualifications for suffrage, is left by the national constitution to the several States, except as it is provided by that instrument that

the electors for representatives in Congress shall have the qualifications requisite for electors of the most numerous branch of the State legislature, and as the fifteenth amendment forbids denying to citizens the right to vote on account of race, color, or previous condition of servitude. Participation in the elective franchise is a privilege rather than a right, and it is granted or denied on grounds of general policy; the prevailing view being that it should be as general as possible consistent with the public safety. Aliens are generally excluded, though in some States they are allowed to vote after residence for a specified period, provided they have declared their intention to become citizens in the manner prescribed by law. The fifteenth amendment, it will be seen, does not forbid denying the franchise [fol. 45] to citizens except upon certain specified grounds, and it is matter of public history that its purpose was to prevent discriminations in this regard as against persons of African descent. Minors, who equally with adult persons are citizens, are still excluded [as were also women before the adoption of the nineteenth amendment]; and sometimes persons who have been convicted of infamous crimes [are excluded] * * * In some States laws will be found in existence which, either generally or in particular cases, deny the right to vote to those persons who lack a specified property qualification, or who do not pay taxes. In some States idiots and lunatics are also expressly excluded; and it has been supposed that these unfortunate classes, by the common political law of England and of this country, were excluded with women, minors, and aliens from exercising the right of suffrage, even though not prohibited therefrom by any express constitutional or statutory provision. Wherever the constitution has prescribed the qualifications of electors, they cannot be changed or added to by the legislature, or otherwise than by an amendment of the constitution. One of the most common requirements is, that the party offering to vote shall reside within the district which is to be affected by the exercise of the right. If a State officer is to be chosen, the voter should be a resident of the State; and if a county, city or township officer, he should reside within such county, city, or township. This is the general rule; and for the more convenient determination of the right to vote, and to prevent fraud, it is now generally required that the elector shall only exercise within the municipality where he has his residence his

right to participate in either local or general elections. Requiring him to vote among his neighbors, by whom he will likely be known, the opportunities for illegal or fraudulent [fol. 46] voting will be less than if the voting were allowed to take place at a distance and among strangers. And wherever this is the requirement of the constitution, any statute permitting voters to deposit their ballots elsewhere must necessarily be void. * * *

"While it is true that the legislature cannot add to the constitutional qualifications of electors, it must nevertheless devolve upon that body to establish such regulations as will enable all persons entitled to the privilege to exercise it freely and securely, and exclude all who are not entitled from improper participation therein. For this purpose the times of holding elections, the manner of conducting them and of ascertaining the result, are prescribed, and heavy penalties are imposed upon those who shall vote illegally, or instigate others to do so, or who shall attempt to preclude a fair election or to falsify the result. The propriety, and indeed the necessity, of such regulations are undisputed. In some of the States it has also been regarded as important that lists of voters should be prepared before the day of election, in which should be registered the name of every person qualified to vote. Under such a regulation, the officers whose duty it is to administer the election laws are enabled to proceed with more deliberation in the discharge of their duties, and to avoid the haste and confusion that must attend the determination on election day of the various and sometimes difficult questions concerning the right of individuals to exercise this important franchise. Electors, also, by means of this registry, are notified in advance what persons claim the right to vote, and are enabled to make the necessary examination to determine whether the claim is well founded, and to exercise the right of challenge if satisfied any person registered is unqualified. When the con- [fol. 47] stitution has established no such rule, and is entirely silent on the subject, it has sometimes been claimed that the statute requiring voters to be registered before the day of election, and excluding from the right all whose names do not appear upon the list, was unconstitutional and void, as adding another test to the qualifications of electors which the constitution has prescribed, and as having the effect, where electors are not registered, to exclude

from voting persons who have an absolute right to that franchise by the fundamental law. This position, however, has not been generally accepted as sound by the courts. The provision for a registry deprives no one of his right, but is only a reasonable regulation under which the right may be exercised. Such regulations must always have been within the power of the legislature, unless forbidden. Many resting upon the same principles are always prescribed, and have never been supposed to be open to objection. Although the constitution provides that all male citizens twenty-one years of age and upwards shall be entitled to vote, it would not be seriously contended that a statute which should require all such citizens to go to the established place for holding the polls, and there deposit their ballots, and not elsewhere, was a violation of the Constitution, because prescribing an additional qualification, namely, the presence of the elector at the polls. All such reasonable regulations of the constitutional right which seem to the legislature important to the preservation of order in elections, to guard against fraud, undue influence, and oppression, and to preserve the purity of the ballot-box, are not only within the constitutional power of the legislature, but are commendable, and at least some of them absolutely essential. And where the law requires such a registry, and forbids the reception of votes from any per- [fol. 48] sons not registered, an election in a township where no such registry has ever been made will be void, and cannot be sustained by making proof that none in fact but duly qualified electors have voted. It is no answer that such a rule may enable the registry officers, by neglecting their duty, to disfranchise the electors altogether; the remedy of the electors is by proceedings to compel the performance of the duty; and the statute, being imperative and mandatory, cannot be disregarded. The danger, however, of any such misconduct on the part of officers is comparatively small, when the duty is entrusted to those who are chosen in the locality where the registry is to be made, and who are consequently immediately responsible to those who are interested in being registered.

"All regulations of the elective franchise, however, must be reasonable, uniform, and impartial; they must not have for their purpose directly or indirectly to deny or abridge the constitutional right of citizens to vote, or unnecessarily to impede its exercise; if they do, they must be declared void."

And the same text-writer, in his work on Taxation (4th ed.) vol. 4, pp. 3497-3507, says: "A capitation or poll-tax is a tax on the poll without reference to property, business or other circumstances. It is imposed numerically upon citizens without reference to their capacity to sustain the burden. A poll or capitation tax is not a tax upon property but is a tax against the person. However, a poll-tax, although not a tax on property, is nevertheless a tax within constitutional and statutory provisions in relation to taxes. * * * Capitation or poll-taxes are generally regarded as a proper means for raising revenue for public purposes. The legislature of a State ordinarily has power to impose a poll-tax, in the absence of direct constitutional [fol. 49] prohibition or limitation, and constitutional objections have for the most part been overruled and the imposition of the tax held constitutional. In some States the constitution itself expressly authorizes or levies a poll-tax; but constitutional provisions relating to capitation taxes are generally not self-executing. * * * It is generally held that the requirement in a State constitution that taxes shall be equal and uniform does not apply to poll-taxes. * * * A poll-tax on males does not violate the constitutional provision because of discrimination on account of sex. * * * It is within the power of the legislature to make the payment of poll-taxes a condition precedent to the right to vote.

We have made the above lengthy quotations from Mr. Cooley's works on "Constitutional Limitations" and "Taxation" because in a brief way the principles laid down by the text-writer and the cases cited in the lengthy annotations thereto cover the substantial questions in this record. In addition, see also the following authorities: "Frieszleben v. Shallcross, 9 Houst. (Del.) 1 (19 Atl. 576, 8 L. R. A. 337); Short v. Maryland, 80 Md. 392 (31 Atl. 322, 29 L. R. A. 404); Hawkins v. Hawkins, 350 Ill. 227 (183 N. E. 9); United States v. Reese, 92 U. S. 214 (23 L. ed. 563); Thurston County v. Tenino Stone Quarries, 44 Wash. 351 (87 Pac. 634, 12 Ann. Cas. 314); Peacock v. Pratt, 121 Fed. 772, 775; LaBelle Iron Works v. U. S., 256 U. S. 377 (41 Sup. Ct. 528, 65 L. ed. 998); Pohl v. Chicago &c. R. Co., 52 Mont. 572 (160 Pac. 515); Olander v. Hollowell, 193 Iowa, 979 (188 N. W. 667); State ex rel. Atty.-gen. v. Dillon, 32 Fal. 545 (14 So. 383, 22 L. R. A. 124, 20 C. J. 76, § 37); McMahon v. Savannah, 66

Ga. 217 (42 Am. R. 65). It follows from what is said above that the court did not err in sustaining the motion to dis-
[fol. 50] miss the petition in this case.

Judgment affirmed. All the Justices concur, except Atkinson, J., absent because of illness.

[fol. 51] IN SUPREME COURT OF GEORGIA

[Title omitted]

PETITION FOR APPEAL—Filed January 13, 1937

To the Chief Justice of the Supreme Court of the State of Georgia:

Your petitioner, Nolen R. Breedlove, respectfully shows: That he is the plaintiff in error in the above stated cause.

That the said case originated through mandamus proceedings instituted by Nolen R. Breedlove against T. Earl Suttles, as Tax Collector of Fulton County, Georgia, to require that the said Tax Collector register the said Breedlove to vote for the electors of the President and Vice-President of the United States and the Members of the Congress in the general elections without requiring him to pay poll taxes imposed under Article II, Section 1, Paragraph 3 of the Constitution of the State of Georgia, as amended, and Sections 34-103, 34-113, 34-114, and 92-108 of the Code of Georgia, enacted in pursuance thereof. The said suit attacked the validity of the said constitutional provision and said laws enacted in pursuance thereof as violative of the Preamble to the Constitution of the United States; Article I, Section 8, Paragraph 1 of said Constitution; Article I, Section 9, Paragraph 4 of said Constitution, Article IV, [fol. 52] Section 2 of said Constitution; Article VI, Section 2 of said Constitution; Article XIV, Section 1 of said Constitution; Article XV, Section 1 of said Constitution; Article XIX, Section 1 of said Constitution; Article IV, Section 4 of said Constitution, all of which more fully appears in the original petition in said case.

The tax collector took no issue on any matter connected with said suit except only that he denied the unconstitutionality of said State constitutional provision and said laws enacted in pursuance thereof.

Thus under the pleadings in the case the sole issue on which the same was to be determined, and was determined, was whether the said constitutional provision and said laws enacted in pursuance thereof were unconstitutional in said respects.

Upon the hearing of the cause in Fulton Superior Court, an oral motion to dismiss the petition having been made and granted, an order and judgment dismissing the petition of plaintiff was entered. That Court entered no formal opinion orally or in writing in its order of dismissal.

Thereupon plaintiff in error appealed said case to the Supreme Court of Georgia by bill of exceptions and writ of error pursuant to the Georgia practice in such cases.

On the 14th day of October, 1936, the Supreme Court of the State of Georgia rendered a judgment affirming the judgment of Fulton Superior Court, which judgment is of file in this cause.

The judgment of the Supreme Court of the State of Georgia is that of the highest court of said State in which a decision in this case may be had.

[fol. 53] In the manner aforesaid there was in said cause drawn in question the validity of a constitutional provision of the State of Georgia and certain statutes enacted in pursuance thereof on the ground that they were repugnant to the Constitution of the United States, and the decision of the Supreme Court of the State of Georgia is in favor of the validity of said constitutional provision and said statutes enacted in pursuance thereof, notwithstanding your petitioner's contention that they violate the provisions of the Constitution of the United States as above set out.

Therefore, in accordance with 237 (a) of the Judicial Code (the same being set out as U. S. C. A., 28, Par. 344), and in accordance with the rules of the Supreme Court of the United States, the case is one which under the legislation in force when the Act of Congress of January 31, 1928, was passed, a review could be had in the Supreme Court of the United States on a writ of error as a matter of right. Therefore, under the aforesaid Act of January 31, 1928, a review may be had as a matter of right by appeal.

The errors upon which your petitioner claims to be entitled to an appeal are more fully set out in the assignment of error filed herewith pursuant to the rules of the Supreme Court of the United States, and there is likewise

filed herewith a statement as to the jurisdiction of the Supreme Court of the United States as provided by said rules.

The judgment of the Supreme Court of the State of Georgia now sought to be reviewed was a final judgment for that under the said judgment and the opinion of the court, in the light of the proceedings had in said case, the said judgment leaves nothing for the trial court to do except the ministerial act of entering final judgment pur- [fol. 54] suant to the judgment and decision of the Supreme Court of the State of Georgia.

Wherefore, petitioner prays that this his petition for the allowance of an appeal from the Supreme Court of the State of Georgia, the highest court of said State in which a decision in this cause may be had, be allowed and transmitted to the Supreme Court of the United States, in order that the decision and final judgment of the Supreme Court of the State of Georgia may be examined and reversed, and also prays that a transcript of the record, proceedings and papers in this case, duly authenticated by the Clerk of the Supreme Court of the State of Georgia, under her hand and the seal of said Court, may be sent to the Supreme Court of the United States, as provided by law, and that an order be made touching the security to be required of petitioner and that the bond tendered by petitioner be approved.

This the 12 day of January, 1937.

J. Ira Harrelson, Arthur Garfield Hays, Attorneys for Petitioner.

[File endorsement omitted.]

[fol. 55] IN SUPREME COURT OF GEORGIA

[Title omitted]

ASSIGNMENTS OF ERROR—Filed January 13, 1937

The above named, Nolen R. Breedlove, who is the appellant herein to the Supreme Court of the United States and herein referred to as appellant, concurrently with the filing of his petition for appeal files these assignments of error and says that the judgment of the Supreme Court of the State of Georgia in this case rendered on the 14th day of

October, 1936, is erroneous and injurious to the appellant in the following respects:

1

The Supreme Court of Georgia erred in affirming the judgment of Fulton Superior Court and declaring Artiele II, Section 1, Paragraph 3 of the Constitution of Georgia, as amended, and Sections 34-103, 34-113, 34-114 and 92-108 of the Code of Georgia enacted in pursuance thereof to be valid and constitutional by its order dismissing the petition on oral motion of counsel for defendant in error in the trial court.

2

The Supreme Court of Georgia erred in failing to render judgment in favor of said appellant.

3

The Supreme Court of Georgia erred in failing to hold that Article II, Section 1, Paragraph 3 of the Constitution [fol. 56] of Georgia, as amended, and said laws enacted in pursuance thereof, deprive appellant of his liberty without due process of law in violation of Article XIV, Section 1 of the Constitution of the United States.

4

The Supreme Court of Georgia erred in failing to hold that Article II, Section 1, Paragraph 3 of the Constitution of Georgia, as amended, and said laws enacted in pursuance thereof, deny to appellant the equal protection of the laws in violation of Article XIV, Section 1 of the Constitution of the United States.

5

The Supreme Court of Georgia erred in failing to hold that Article II, Section 1, Paragraph 3 of the Constitution of Georgia, as amended, and said laws enacted in pursuance thereof, deny to appellant the privileges and immunities of a citizen of the United States as guaranteed by Article XIV, Section 1 of the Constitution of the United States.

6

The Supreme Court of Georgia erred in failing to hold that Article II, Section 1, Paragraph 3 of the Constitution

of Georgia, as amended, and said laws enacted in pursuance thereof, deny to appellant the enjoyment of the privileges of a republican form of Government in violation of Article IV, Section 4 of the Constitution of the United States.

7

The Supreme Court of Georgia erred in failing to hold that Article II, Section 1, Paragraph 3 of the Constitution of Georgia, as amended, and said laws enacted in pursuance thereof, arbitrarily and unreasonably discriminate against appellant in so far as they grant special privileges to women [fol. 57] which are denied to appellant and other male citizens similarly situated in violation of Article XIX, Section 1 of the Constitution of the United States which says that the right to vote shall not be denied or abridged on account of sex.

Wherefore, appellant prays that the judgment complained of be set aside and reversed and that said laws of Georgia be declared to be in violation of and repugnant to each and all of the foregoing provisions of the Constitution of the United States in so far as they operate as a prerequisite to the right of citizens to vote for the electors for the President and Vice-President of the United States and Senators and Representatives in Congress, and for such further relief as to this Court may seem proper.

J. Ira Harrelson, Arthur Garfield Hays, Counsel for Appellant.

[File endorsement omitted.]

[fol. 58] IN SUPREME COURT OF GEORGIA

[Title omitted]

ORDER ALLOWING APPEAL—Filed January 13, 1937

The petition of Nolen R. Breedlove, plaintiff in error in the above entitled cause, for an appeal in the above cause to the Supreme Court of the United States from the judgment of the Supreme Court of the State of Georgia, having been filed with the clerk of this Court and presented herein, accompanied by the assignments of error and statement as to jurisdiction, all as provided by Rule 46 of the Rules of

the Supreme Court of the United States, and the record in this cause having been considered, it is hereby

Ordered that an appeal be and it is hereby allowed to the Supreme Court of the United States from the final judgment, which said judgment is described in the petition for the allowance of an appeal, of the Supreme Court of the State of Georgia, as prayed in said petition, and that the clerk of the Supreme Court of the State of Georgia shall, within forty days from this date, make and transmit to the Supreme Court of the United States, under her hand and the seal of said Court, a true copy of the material parts of the record herein, which shall be designated by præcipe or stipulation of the parties or their counsel herein, all in accordance with Rule 10 of the Rules of the Supreme Court of the United States.

[fol. 59] It is further Ordered that the said appellant shall give a good and sufficient bond, in the sum of Two Hundred ($200.00) Dollars, that said appellant shall prosecute said appeal to effect and answer all costs if they fail to make their plea good, and that said bond, when filed and approved, shall stay the sending down of the mandate herein and of all proceedings in this cause until the final disposition of this cause by the Supreme Court of the United States.

This the 13th day of January, 1937.

Richard B. Russell, Chief Justice of the Supreme Court of the State of Georgia.

[File endorsement omitted.]

[fol. 60] Citation, in usual form, showing service on T. Earle Suttles, filed January 13, 1937, omitted in printing.

[fols. 61-78] Bond on appeal for $200.00, approved and filed January 13, 1937, omitted in printing.

[fol. 79] IN SUPREME COURT OF GEORGIA

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed January 13, 1937

To the Clerk of the Supreme Court of the State of Georgia:

The above named plaintiff in error as appellant in the appeal in this case files this præcipe to indicate to you the portions of the record to be incorporated in the transcript

on appeal. You will make the transcript of the record and transmit the same to the Supreme Court of the United States under your hand and the seal of the Supreme Court of the State of Georgia, duly certifying the same and incorporating therein the following portions of the record:

1. The original petition filed by the plaintiff in Fulton Superior Court;

2. The amendment to the original petition filed by the plaintiff on the 15th day of April, 1936, and the order allowing the same;

3. The amendment to the original petition filed by the plaintiff on the 6th day of May, 1936, and the order allowing the same;

4. The order and judgment of Fulton Superior Court by the Honorable Hugh M. Dorsey, Judge, rendered on the 6th day of May, 1936, dismissing plaintiff's petition as amended;

5. The bill of exceptions with pauper's affidavit attached thereto and the order certifying and approving the same; [fol. 80] 6. The judgment of the Supreme Court of the State of Georgia on the 14th day of October, 1936, affirming the judgment of Fulton Superior Court;

7. The opinion of the Supreme Court of the State of Georgia;

8. The petition for the allowance of an appeal to the Supreme Court of the United States;

9. The order allowing the same;

10. The citation and the acknowledgment of service thereon;

11. The assignments of error on appeal to the Supreme Court of the United States;

12. The bond on appeal to the Supreme Court of the United States;

13. The statement as to the jurisdiction of the Supreme Court of the United States;

14. The acknowledgment of service of the petition for appeal, order allowing the same, assignments of error and statement as to jurisdiction including therein the notice with respect thereto;

15. This præcipe with the acknowledgment of service thereon.

This the 12 day of January, 1937.

J. Ira Harrelson, Arthur Garfield Hays, Counsel for Appellant.

Due and legal service of the foregoing præcipe is hereby acknowledged this the 13 day of January, 1937.

T. Earl Suttles, Appellee, Fulton County Court House, Atlanta, Ga.

[fols. 81-86] [File endorsement omitted.]

[fol. 87] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 88] IN SUPREME COURT OF THE UNITED STATES

APPELLANT'S STATEMENT OF POINTS TO BE RELIED ON AND THE PARTS OF THE RECORD NECESSARY FOR THE CONSIDERATION THEREOF—Filed March 15, 1937

Appellant intends to rely upon the following points:

The judgment of the Supreme Court of the State of Georgia was erroneous in that it held constitutional a tax imposing penalties of $13.50 upon appellant, which he is unable to pay, and upon others similarly situated, as a prerequisite to voting for electors of the President and the Vice President of the United States and the Senators and Representatives in Congress, from the payment of which persons above sixty are arbitrarily exempt and from the payment of which female inhabitants are arbitrarily exempt until they register to vote, whereas the assessment runs against appellant and others similarly situated from year to year whether they register or not, said exemptions and discriminations being arbitrary, capricious and unreasonable, having no relationship to the public health, morals or general welfare or any other matter within the so-called police power.

The effect of the sustained provisions of the Georgia constitution and statutes was to restrict the vote in the State of Georgia in the national elections of 1932 to eight per [fol. 89] cent of the population, while an average of thirty-nine per cent of the total population cast their ballots in the same elections in the thirty-nine States which do not require the payment of a poll tax as a condition of registering and voting. Thus, the appellant and others similarly

situated have been deprived of the enjoyment of the privilege of the elective franchise, inconsistently with those fundamental principles of liberty and justice which lie at the base of our civil and political institutions. The privilege of voting for federal officials is one to which the appellant is entitled, unhampered and unrestricted by a capitation or other direct tax arbitrarily imposed through hostile state invasions of his rights as a citizen of the United States. As such citizen he is entitled to participate in the choice of electors of the president and the vice-president of the United States and of senators and representatives in Congress and no State may exercise its taxing power so as to destroy this privilege. If the tax imposed by Georgia were increased to a high degree, as it can be, if valid, it might easily be used for the purpose of destroying the elective franchise altogether, by reducing the percentage of voters to far less than eight per cent of the population of the State. Whatever property and other economic restrictions on the franchise may have been upheld in earlier periods of our history, the admission today that a State has the power to prevent its poorer inhabitants from participating in the choice of federal officials would be totally contrary to the contemporary spirit of American institutions, and inconsistent with the purposes announced in the Preamble to the United States Constitution.

Moreover, the manner of levying and collecting the Georgia poll tax opens its purpose to suspicion, since it is not [fol. 90] collected through levy and pursuit as are taxes intended for revenue purposes, but, rather, through the process of restriction and prior restraint on the right to vote.

The said judgment of the Supreme Court of the State of Georgia was erroneous in that it held constitutional said Georgia laws, which arbitrarily, capriciously and unreasonably deny to appellant as a citizen of the United States residing in Georgia the equal protection of the laws guaranteed to all persons within the State's jurisdiction by the Fourteenth Amendment. Persons above sixty may register without paying any poll-tax, and female inhabitants may do so without paying the tax except for years in which they actually register, whereas the tax is assessed cumulatively against appellant, even as to the years in which he made no attempt to register. The classification is wholly unreasonable.

The judgment of the Supreme Court of the State of Georgia was erroneous in that it held constitutional said Georgia laws, which arbitrarily, capriciously and unreasonably deprive appellant of liberty and property without due process of law in violation of the fourteenth amendment to the Constitution of the United States.

The judgment of the Supreme Court of the State of Georgia was erroneous in that it held constitutional said Georgia laws, which arbitrarily, capriciously and unreasonably deny to appellant the privileges and immunities guaranteed to him by the fourteenth amendment to the Constitution of the United States.

The judgment of the Supreme Court of the State of Georgia was erroneous in that it held constitutional said Georgia laws, which, as set forth in Paragraph 2 above, arbitrarily, capriciously and unreasonably abridge the right of appel- [fol. 91] lant to vote by reason of sex by requiring him to pay $13.50, whereas a woman similarly situated would be exempt from the payment thereof, in violation of Article XIX of the Constitution of the United States.

The judgment of the Supreme Court of the State of Georgia was erroneous in that it held constitutional said Georgia laws which deprive appellant and the remaining citizens of the United States residing in Georgia, who are otherwise qualified but unable to pay the poll tax, of the right to vote, and which have established and maintained an oligarchic and autocratic rather than a republican form of government by reason of the facts recited above, and as otherwise set out in the mandamus petition, in derogation of Article IV, Section 4 of the Constitution of the United States, which guarantees to every state a republican form of government, the Supreme Court of the United States having construed said constitutional guarantee to be an inherent and inalienable right of the people of the United States as citizens thereof.

Appellant specifies the following parts of the record which he thinks necessary for the consideration of the aforesaid points:

(a). The original petition filed by the plaintiff in Fulton superior court;

(b). The amendment to the original petition filed by the plaintiff on the 15th day of April, 1936, and the order allowing the same;

(c). The amendment to the original petition filed by the plaintiff on the 6th day of May, 1936, and the order allowing the same;

(d). The order and judgment of Fulton superior court by the Honorable Hugh M. Dorsey, Judge, rendered on the 6th day of May, 1936, dismissing plaintiff's petition as [fol. 92] amended;

(e). The bill of exceptions with pauper's affidavit attached thereto and the order certifying and approving the same;

(f). The judgment of the Supreme Court of the State of Georgia on the 14th day of October, 1936, affirming the judgment of Fulton superior court;

(g). The opinion of the Supreme Court of the State of Georgia;

(h). The petition for the allowance of an appeal to the Supreme Court of the United States;

(i). The order allowing the same;

(j). The citation and acknowledgment of service thereon;

(k). The assignments of error on appeal to the Supreme Court of the United States;

(l). The bond on appeal;

(m). The statement as to jurisdiction of the Supreme Court of the United States;

(n). The acknowledgment of service of the petition for appeal, order allowing the same; assignments of error and statement as to jurisdiction including therein the notice with respect thereto;

(o). The præcipe with the acknowledgment of service thereon.

J. Ira Harrelson, Arthur Garfield Hays, Counsel for Appellant.

Due and legal service of the foregoing is hereby acknowledged, copy received and further service waived.

This the 13 day of January, 1937.

[fol. 93] T. Earl Suttles, Appellee, Address: Fulton County Court House, Atlanta, Ga.

[fol. 94] [File endorsement omitted.]

Endorsed on cover: File No. 41,317. Georgia Supreme Court. Term No. 777. Nolen R. Breedlove, appellant, vs. T. Earl Suttles, as Tax Collector. Filed March 4, 1937. Term No. 777, O. T., 1936.